IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 19 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA and
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

ILAC LIMITED

Appearance:
MR.P.K.JANI with MR MANISH R BHATT for Petitioner
Mr.D.A.Mehta with R.K.Patel for MR KC PATEL
for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA and
MR.JUSTICE S.D.PANDIT

Date of decision: 16/08/96

ORAL JUDGMENT (Per N.J.Pandya,J.)

By now the controversy has come to rest in view of the Supreme Court decision which will be referred to hereafter.

2. The first question that came to be referred to us is as under:

> Whether the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that, the assessee was entitled to claim a deduction of Rs.95,579/- as expenses not being of an entertainment nature?

The factual background is that for the assessment year 1975-76, the respondent-assessee was claiming reduction in respect of an amount of Rs.95,579/- said to have been spent on tea, cold-drinks etc. as business expenditure and the stand of the Department was that this cannot be allowed looking to Sec.37(2B) of the Income-tax Act, 1961 as it is an expense of entertainment nature. Needless to say, that the stand of the assessee was that it is not so.

2. All through out, the assessee had in its favour a decision of this Court reported in 106 ITR 424 and as such the assessee succeeded in getting reduction with regard to that expenditure. Now, the controversy is set at right by the Honourable Supreme Court as per the decision reported in 215 ITR 165. The Department has to accept this position now and as such, question no.1 has to be answered in favour of the assessee.

3. The second question reads as under:

> Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to a deduction ofRs.2,25,525/- was for gratuity liability even though the amount was not provided by way of provision in the accounts of the assessee and that the requirements of Section 40A(7) were not complied with?

As contained in it, the controversy revolves around reduction of Rs.2,25,525/- in relation to gratuity liability, though the Company had not fulfilled the requirement of Sec.40A(7). This controversy again is set at rest by the Supreme Court in 156 ITR 585. It is clear from the ruling of the Apex Court that unless these requirements are fulfilled, merely making a grievance in the account will not entitle the assessee to claim reduction. That is exactly the position here. Therefore, this will have to be answered in favour of the

Department. Reference is disposed of accordingly with no order as to costs.

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